

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA,
NORTHERN DIVISION

LEE HARTWELL,

Plaintiff,

vs.

THE CITY OF MONTGOMERY and
THE PERSONNEL BOARD FOR THE
CITY AND COUNTY OF
MONTGOMERY, and KELLY
GORDON

Defendants.

Case No.: 2:06-CV-518

**PLAINTIFF LEE HARTWELL'S
JURY CHARGES**

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DEBRA P. HACKETT, CLK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

COMES NOW Lee Hartwell, the Plaintiff in the above styled action, by and through his undersigned counsel of record, and respectfully requests this Court to give the following charges to the jury at the trial in this matter.

Respectfully submitted on this the 15th day of May, 2007.



J. BERNARD BRANNAN, JR. (BRA022)
Attorney for the Plaintiff Lee Hartwell

OF COUNSEL:
THE BRANNAN LAW FIRM, P.C.
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PLAINTIFF'S PROPOSED JURY CHARGE NO. ONE

The Plaintiff has a claim for retaliation for exercising his First Amendment right to freedom of speech against the Defendant Kelly Gordon. To determine whether or not the action taken by Kelly Gordon violated the Plaintiff's constitutional rights:

You must consider that the Plaintiff has the burden to first establish that the speech involved a matter of public concern;

Second, that the Plaintiff's free speech interest outweighed his employer the City of Montgomery's interests in effective and efficient fulfillment of the City's responsibilities;

Third, that the speech played a substantial part in the adverse employment action taken against the Plaintiff.

If the Plaintiff has established these three (3) factors by a preponderance of the evidence, the burden then shifts to the Defendant to show by a preponderance of the evidence that he would have made the same decisions even in the absence of the protected speech.

Cook v. Gwinnett County School District, 414 F.3d 313 (11th Cir., 2005)

GIVEN _____

REFUSED _____

PLAINTIFF'S PROPOSED JURY CHARGE NO. TWO

A public employee's speech involves a matter of public concern if it can be fairly considered as relating to any matter of political, social, or other concern to the community.

Cook v. Gwinnett County School District, 414 F.3d 313 (11th Cir., 2005)

GIVEN _____

REFUSED _____

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing on the following counsel of record, by placing a copy of same in the United States Mail, postage prepaid and properly addressed on this the 18th day of May, 2007:

Wallace D. Mills
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OF COUNSEL